

CIVIL SERVICE COMMISSION MINUTES

July 3, 2002

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Gordon Austin
Barry I. Newman
Sigrid Pate
Mary Gwen Brummitt

Absent was:

Roy Dixon

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
July 3, 2002

1:45 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway,
San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>6,7,8,9,10</u>	<u>5,12,13</u>		

COMMENTS Motion by Newman to approve all items not held for discussion; seconded by Brummitt. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

A. Commissioner Austin: Richard Pinckard, Esq., on behalf of **Larry Bulow**, Deputy Sheriff, appealing an Order of Demotion and Charges (from Sergeant) from the Sheriff's Department.

Continued.

B. Update from Legal Counsel - Existing Litigation: **Joseph Diaz v. Civil Service Commission of the County of San Diego and San Diego Health and Human Services Agency**; Case No. GIC 788100.

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the regular meeting of July 3, 2002.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Cedric Willis**, former Correctional Deputy Probation Officer I, appealing an Order of Removal and Charges from the Department of Probation.
Confirmed.

3. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Jessica De Mumbrum**, former Correctional Deputy Probation Officer I, appealing an Order of Removal and Charges from the Department of Probation.

Confirmed.

4. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Allison Charles-Stahl**, former Correctional Deputy Probation Officer I, appealing an Order of Removal and Charges from the Department of Probation.

Confirmed.

DISCIPLINES

Findings

5. Commissioner Austin: Richard Pinckard, Esq., on behalf of **Larry Bulow**, Deputy Sheriff, appealing an Order of Demotion and Charges (from Sergeant) from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Continued.

DISCRIMINATION

Findings

6. Commissioner Brummitt: **Midori K. Dirig**, former Sheriff's Deputy, alleging national origin discrimination and retaliation by the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on March 7, 2001, the Commission appointed Mary Gwen Brummitt to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. Ms. Dirig also filed complaints with EEOC alleging the same or similar allegations as those filed with the Commission. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of national origin discrimination and retaliation and that probable cause that a violation of discrimination laws occurred was not established in this matter. It is therefore recommended that: (1) this complaint be denied; and (2) the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against on any basis protected by law.

Motion by Brummitt to approve Findings and Recommendation; seconded by Newman. Carried.

7. Commissioner Pate: **Donald Klatt**, former Pharmacist, Health and Human Services Agency (HHSA) alleging retaliation discrimination by the HHSA.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on January 16, 2002, the Commission appointed Sigrid Pate to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of non job-related discrimination; that probable cause that a violation of discrimination laws occurred was not established in this matter. It is therefore recommended that: (1) this complaint and request for investigation be denied; (2) the Commission approve and file this report with a findings of no probable cause that Complainant has

been discriminated against on any basis protected by law; and (3) [supervisor] Mr. Mastin be required to complete training on progressive discipline and be provided with any other training and support that is needed to bring him fully competent in handling of personnel matters.

Motion by Pate to approve Findings and Recommendation; seconded by Brummitt. Carried.

SELECTION PROCESS

Complaints

8. **Donald Haverkamp**, Applicant, appealing his non-selection for the classification of Supervising Communicable Disease Investigator by the HHSA.

RECOMMENDATION: Deny Request.

Mr. Haverkamp was contracted to the San Diego State Foundation, representing the County for over 7 years. Due to the end of the contract with the County, a Civil Service hiring process was commenced. It was Applicant's firm belief that he would be transitioned into the County if he met the minimum qualifications and was placed on various lists. He relied on good faith remarks allegedly made to him by the appointing authority. In this vein, Applicant did not look for other employment. He assumed that he was the best candidate for the County position and relied heavily on management's desire to re-hire Foundation employees into the County.

Kim Medeiros, Department Personnel Officer, on behalf of the Agency, explained that 34 Foundation employees were re-hired into the 65 County positions. She offered that many forums were held to explain the selection process of the County, and explained to the Commission that there was never any guarantee that any Foundation employee would be hired for the County positions. Interviews were conducted by four different Agency managers and selection was based on test scores and interviews.

The Commission asked Applicant what his ultimate goal was by requesting a Rule X hearing: (1) Investigation to expose injustice of selection process; and (2) Monetary compensation for lost wages. Ralph Shadwell, Sr. Deputy County Counsel, advised that in this instance, the Commission did not have the authority to compensate Applicant for lost wages. The Commission emphasized that an appointing authority has the right to select the most qualified person for a position.

Motion by Newman to accept staff recommendation; seconded by Brummitt. Carried.

9. **Rodney Lee Johnson**, Applicant, appealing the Department of Human Resources' (DHR) rescission of HHSA's job offer for the classification of Protective Services Worker II.

RECOMMENDATION: Deny Request.

Mr. Johnson disagrees with DHR's rescission of HHSA'S job offer for the classification of PSW II and disputes the reasons set forth by the Department.

Kim Medeiros, for the Agency, explained that the Agency receives information from former employers, which is not public record; therefore no specifics are given for an applicant's disqualification.

Kelley Bacon, representing DHR, explained that Applicant was qualified, placed on a list, certified to the Agency and interviewed by the Agency. Applicant was given a conditional job offer, then a background check ensued. Each department does its own background check. Based on the information received by the Agency, the offer was rescinded.

Larry Cook, Executive Officer, explained that a Rule X hearing of this type normally encompasses an in camera review, but is not limited to the in camera review. Due to the fact that some of the background information was revealed, and Mr. Johnson refutes the validity of the information, the Commission granted a hearing to view the background investigation in camera.

**Motion by Pate to grant a Rule X hearing; seconded by Newman.
Carried. Commissioner Austin assigned.**

Findings

10. Commissioner Pate: **Larry D. Bullock**, Field Service Officer, Sheriff's Department, appealing his non-selection for the classification of Deputy Sheriff Cadet Detentions/Court Services by the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

A hearing was conducted on June 27, 2002 regarding the Sheriff's Department non-selection of Appellant for the classification of Deputy Sheriff Cadet Detentions/Court Services. The purpose of the hearing was to conduct an in camera review of Appellant's background investigation file. All evidence was thoroughly considered.

Appellant is currently employed by the Sheriff's Department as a Field Services Officer and has a strong desire to be promoted to the classification of Deputy Sheriff Cadet Detentions/Court Services. The selection process that Appellant is contesting consists of primary segments such as a written exam, interviews, psychological evaluation, polygraph, and a background investigation. Appellant was successful with some segments of the selection process, but since he failed the background investigation he could not proceed to the remaining segments. Appellant was not successful in the background investigation segment of the selection process in the Deputy Sheriff Cadet/Detentions Court Services classification due to information revealed during the course of investigation.

At the Commission hearing the Hearing Officer thoroughly reviewed the background investigation file in camera with the Sheriff's Personnel Manager and one of the Background Investigators, as well as three additional background investigations that were also failed in previous years. The background investigation file reviewed in camera revealed that the information that caused the Department to decide against hiring Appellant came from multiple sources, and the reasons for failure were also multiple. After reviewing this material and asking questions of the Department representatives for approximately one and one-half hours, the Hearing Officer concluded that the Department made a reasonable decision by not selecting Appellant for the classification of Deputy Sheriff Cadet/Detentions Court Services.

Information from the in camera review and as a result of personal observation, the Hearing Officer concluded that Appellant is a well-intentioned, well-liked individual. She encourages Appellant to consider other County employment opportunities, many of which might better fit his talents. It is therefore recommended that Appellant's appeal be denied; and this proposed decision shall become effective upon

the date of approval by the Civil Service Commission.

Motion by Pate to approve Findings and Recommendations; seconded by Newman. Carried.

11. **Brett W. Garrett**, appeal of removal of his name by DHR from the employment list for Corrections Deputy Sheriff.

RECOMMENDATION: Ratify Item No. 11. Appellant has been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item No. 11 ratified.

INVESTIGATIONS

Complaints

12. Barrett Foerster, Esq., on behalf of **Marian Modrak**, Deputy Public Defender IV, requesting a Civil Service Rule XI investigation into alleged improper operations of the Department of the Public Defender with respect to the preparation and issuance of Performance Appraisals. Continued from the Commission meeting of June 19, 2002. (See No. 13 below.)

RECOMMENDATION: Deny Request.

Continued per the request of counsel on behalf of Ms. Modrak. The Department and Counsel agreed to continue this matter until the CSC meeting of August 21 or later.

OTHER MATTERS

Seal Performance Appraisal

13. Barrett Foerster, Esq., on behalf of **Marian Modrak**, Deputy Public Defender IV, requesting an investigation and sealing of a Performance Appraisal for the period November 18, 2000 to November 18, 2001. Continued from the Commission meeting of June 19, 2002. (See No. 12 above)

RECOMMENDATION: Deny Request.

Continued per the request of counsel on behalf of Ms. Modrak. The Department and Counsel agreed to continue this matter until the CSC meeting of August 21 or later.

Extension of Temporary Appointments

14. Health and Human Services Agency

2 Recreational Care Worker Trainees (Breeann Bryson, Angela Smiley)

RECOMMENDATION: Ratify Item No. 14.

Item No. 14 ratified.

15. Public Input.

OFF DOCKET ITEM

Motion by Austin to include Off Docket Item; seconded by Newman. Carried.

CONFIRMATION OF ASSIGNMENTS

16. Commissioners Brummitt and Newman: Fern Steiner, Esq., on behalf of **Josefina Munoz**, former Correctional Deputy Probation Officer I, appealing an Order of Removal and Charges from the Department of Probation.

Confirmed.

ADJOURNMENT: 3:45 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE JULY 17, 2002.